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The Solicitors' Journal

(ESTABLISHED 1857.)

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Current Topics.

Income Tax Collection.

A NUMBER of clerks to Commissioners of Taxes have joined with the Press in supporting the contention of Mr. RONALD STAPLES that the Board of Inland Revenue has no power to control collectors of taxes, even where the right of appointment is vested in the Board. Without power of control it would seem impossible for Somerset House to construct centralised collecting districts to further mechanise tax collecting and suppress the powers of the General Commissioners. It seems incredible that a Government department should proceed with a scheme which, in addition to being opposed to the manifest wishes of the tax-paying community, is without legal foundation. As we stated immediately Sir ERNEST GOWERS recommended the abolition of locally appointed assessors, the tax-paying community will resent most strongly attempts to increase this form of bureaucratic control and to deprive it of the safeguards designed by Parliament for its protection.

Disclosure of Confidential Information.

THE SOLICITOR believes that his first duty is to his client, and that the confidence which his client places in him should be inviolable. The predicament, therefore, in which the practitioner finds himself on receipt of a demand from the Inspector of Taxes for a return of income received on behalf of clients, is a very real one. We have previously drawn attention to this requirement by the revenue authorities, and, for some months following our remarks, an appreciable slackening on the part of inspectors in this connexion was reported to us. We understand, however, that, heartened by the decision in *Attorney-General* v. *National Provincial Bank Ltd.*, the officials are now pressing for returns as energetically as before. There can be little doubt that s. 103 of the Income Tax Act, 1918, does give the revenue authorities power to call for such returns, and it is unlikely that the Board will be persuaded to forego these powers. Nothing short of a change in the law, therefore, can alter the unenviable position in which practitioners are placed by the provisions of this section. On the one hand they are required by all legal and moral standards of conduct and etiquette to maintain the strictest secrecy with regard to the affairs of their clients. On the other hand, the law requires that they should divulge to officials the information they regard with such confidential respect. The facts of the situation must be made known in order that Parliament may make the necessary amendments in the law, for such a state of affairs must not be allowed to continue. A reader suggests that solicitors should take action through their local law societies, who should bring the matter to the notice of Members of Parliament, and we think that this would be the most effective step to take. As our reader points out, the section seems to require solicitors "to do something which they have been used to regard as dishonourable," and this cannot be tolerated.

Custody of Children.

ONE OF the most anxious and responsible duties of judges and magistrates in connexion with matrimonial cases is the disposal of the children of the marriage. In this responsibility the advisers of the parties also have a share. Where one party is clearly all in the wrong and the other equally clearly free from blame, the difficulty is less than in the majority of cases where each is partly in fault. Perhaps the most difficult case of all is that of the adulterous wife with young children. If the husband be innocent, he may offer strenuous objection to his wife as the future custodian of his children. But an unfaithful wife may be devoted to her children, and an innocent husband may be in no sort of position to look after children of tender years as their mother could. In a recent case before a court of summary jurisdiction a wife, who had had a separation and maintenance order and had since, as she admitted, committed adultery, asked the court to exercise its discretion under s. 2 (1) (*b*) of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, and allow her to have the custody of the two young children. She said that she proposed to live with the man with whom she had committed misconduct, and he informed the court that he wished to look after the children. The husband resisted the application, and stated that he could make suitable arrangements for the children to be looked after by his own mother or some other responsible woman. Finally, on the suggestion of the husband's solicitor, the matter was compromised by the custody of one child being given to each party. It is to be noted that the function of the court in this respect is not so much to judge between the two spouses as to consider the future of the children. The section itself says: "the court shall have regard primarily to the interests of the children." In so doing it will, of course, be not unmindful of their moral as well as their physical welfare; but that a mother who has been guilty of immorality is not necessarily to be

deprived of the custody of her children was recognised by the courts before the statute of 1925, in such cases as *Stark* v. *Stark and Hitchens*, 1910, P. 190, and *B.* v. *B.*, 1924, P. 176. Immorality may be flagrant, promiscuous and degrading, or it may be almost excusable.

The Linoleum Fixture.

THE MAGISTRATE at Marylebone, who has a very full day's work ahead of him every morning, cannot well be blamed for giving up a recent legal conundrum propounded to him by a tenant—though one would hardly suppose that the court missionary, to whom he referred her, was better qualified to solve it. On the facts alleged by the tenant, she bought some linoleum, then laid on the floor of the premises she occupied, from the landlord, and, when preparing to vacate them at the expiration of the tenancy, found it was so tightly fastened down that she could not move it without damage to the boarding. The landlord thereupon, according to her story, threatened (*a*) to sue her for damage to the floor in the event of removal, (*b*) to claim rent if the linoleum remained on the premises. These alternatives placed the tenant in the dilemma prepared by PORTIA for SHYLOCK, bound by his bond to abstract a pound of BASSANIO'S flesh without spilling a drop of his blood—the judge, lost in admiration of the lady's forensic acrobatics, failing, as Lord DARLING has properly pointed out, to declare the contract altogether void as against public policy. The question of damage to the freehold in removing chattels has often arisen in cases on fixtures, but not on removable chattels —or rather, damage caused by their removal would be treated in the ordinary way as infringement of the covenant to deliver up in proper repair. In such case nothing would turn on the cause of the damage, unless, perhaps, the landlord had undertaken to remove the furniture, when there might be a counterclaim. In one case KINDERSLEY, V.C., assumed that if fixtures, properly removable by a tenant, could not be removed without material injury to the freehold, the tenant had no right to remove them, see *Gibson* v. *Hammersmith & City Railway Co.*, 1863, 2 Drew & Sm., 603. In any court, however, which had regard to principles of equity, as our courts must have, a landlord who sold a chattel to a tenant would be forbidden to turn round and assert that it was a fixture. The suggestion may be made on the above facts that the linoleum, though *in situ*, was never delivered, since it was never in a "deliverable state" within the Sale of Goods Act, 1893, s. 62 (4). By s. 29 (5), the expense of rendering goods in a deliverable state falls on the seller, in the absence of agreement otherwise. Goods fixed to the seller's premises so that the buyer cannot remove them are certainly not in a deliverable state, and the tenant's remedy, if the above is the true view, would be to call upon the landlord to fulfil his hitherto unfulfilled contract and deliver the linoleum in a portable state, as it should be, or return the price paid. And no retention of possession would be inferred against a tenant whose landlord prevented him or her from removing a chattel by threat of action, or otherwise.

A Way with the Joy Rider.

ONE OF the learned metropolitan police magistrates, in dealing with an offender who had taken a motor car for the purpose of a "joy ride," said he could not convict the accused of stealing the car, but "he was clearly in the unlawful possession of it," for which offence the magistrate proceeded to punish him with a sentence of two months' hard labour. The provision under which the magistrate acted is not one of general application, being peculiar to the metropolis. There is, moreover, some doubt whether it really applies to such a case as the one before him. The section (s. 24 of the Metropolitan Police Courts Act, 1839) provides that "every person who shall be brought before any of the said magistrates charged with having in his possession or conveying in any manner anything which may be reasonably suspected of being stolen or unlawfully obtained, and who shall not give an account to the satisfaction of such magistrate how he came by the same, shall be deemed guilty of a misdemeanour." Clearly, the person who takes hold of another person's car to use it for his own ends has unlawfully obtained it, but, upon sound rules of construction, these words have to be read *ejusdem generis* with "stolen," and it would seem that an act of obtaining which is a mere tort would not come within an expression that implies obtaining by some method which would be criminal in itself. The section is, on the face of it, not intended to cover cases where the facts are all cleared up, but for cases of suspicion where it is reasonable to draw the inference that there has been dishonesty that cannot be proved. The defendant did account to the magistrate how he came by the car. The "satisfaction" contemplated is not the satisfaction arising from the contemplation of an act positively virtuous, but from an explanation which takes the matter outside the criminal law. The device of convicting of larceny of the petrol used is not altogether pleasing, but it is more within the law than the new one brought into operation by the metropolitan magistrate. The matter will never be on a proper footing until our law recognises as an offence the stealing the use of another's property.

Agricultural Wages.

SIR ROBERT GREEN-PRICE, Bart., Chairman of the Knighton Bench, recently uttered some criticisms of the Ministry of Agriculture, which was stated to have met with considerable difficulty in parts of Herefordshire. A farmer was summoned for refusing to give information to officers appointed under the Agricultural Wages (Regulation) Act, s. 9, and for failing to produce records of wages paid, these being offences which are punishable by a fine of £20 or three months' imprisonment, or both. Two duly appointed officers gave evidence that they visited the farm of the defendant, who accused them of delaying his men at their work, and said they had no right to interfere with non-members of the union. The section relating to production of records was read to the defendant, but he refused to believe that the workers had disclosed nothing, and he refused to produce his wages book, stating that he paid more than the minimum wage. The defendant's case was that he was visited on a day when it was hailing badly, and he believed that the officers had obtained the required information from his men. He admitted refusing to produce a wages book, as he did not keep one. After two farm hands had given evidence for the defence, the chairman stated that the case had not been tactfully handled. He added that much time had been wasted on that and other agricultural cases, and he hoped there would be no repetition, the bench having decided to dismiss both summonses. Another farmer was summoned for paying less than the minimum wage to a wagoner, this being an offence punishable under s. 7 (1) by a fine of £20, and £1 for each day on which the offence is continued after conviction. After hearing the evidence on both sides, the chairman pointed out that while the original arrears were alleged to be over £20, a revised calculation reduced them to £11, but the defendant only admitted owing £8. Instead of a conviction there would be an order for the payment of £8, though the case was no credit to the department, as the defendant had been left under the impression that there would be no prosecution.

A Miscarriage of Justice.

A CORRESPONDENT in a Sunday newspaper vouches for the following facts: A married woman eloped with a married man, and for ten years they kept their whereabouts a secret. At the end of that period the runaway man died. The runaway wife turned up in court, had the audacity to claim maintenance covering the period of her elopement, and was actually awarded the same under an Act of 1927, which states that adultery must be proved within six months. This woman kept her address secret and actually produced a death certificate of her lover, proving his death six months three days earlier.

The husband—the innocent victim—failed to find the money and was sentenced to one month's imprisonment in default. Thus a respectable citizen, who had never previously been in any kind of trouble, has been ruined financially and otherwise.

The correspondent, after asking whether this could happen in any other country in the world, deduces that British justice is not all that it should be. If the case was decided in accordance with the law, the deduction might have been justified. On the facts as stated, however, the magistrates appear to have seriously misdirected themselves, and injustice may arise from the mistake not only of a minor but a major tribunal, not only here, but in any other country. There is not, of course, an "Act of 1927" which bears on the above case. No doubt, however, the reference is to a decision, *Waller* v. *Waller*, 1927, P. 154, in which it was laid down that the peremptory jurisdiction of the latter part of s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, is subject to the Summary Jurisdiction Act, 1848, s. 11, limiting complaints and informations to within six months of the date of the subject matter of complaint. On such ground it was held that the husband of a wife who had obtained a maintenance order fifteen years before, and who had committed adultery twelve years before, was not entitled to have the order rescinded as of right. In the present case, however, the application was not to rescind an existing order, but to make an original one in favour of the wife, and s. 6 of the Act in terms forbids such an order to be made in favour of an adulterous wife—unless, of course, the husband has connived at, or condoned, or otherwise conduced to the adultery. On the facts as stated, therefore, the order was *ultra vires*, and should never have been made. Nevertheless, *Waller* v. *Waller* was a case of considerable hardship, and is worth the attention of the Legislature. And it has actually been held that a wife who deserts her husband without justification can obtain a maintenance order if she chooses to offer to return, and her husband finds that he is happier without such a wife: see *Jones* v. *Guardians of Newtown and Llanidloes*, 1920, 3 K.B. 381. The converse proposition, that it is a wife's duty to return to a husband who has deserted her if he asks her to do so is, of course, no part of the "man-made law" of matrimony: see *Thomas* v. *Thomas*, 1924, P. 194.

Prisoners' Rights.

An unhappy Briton has been lying in prison in Portuguese West Africa for the last nine months, awaiting trial on a charge of theft. This is a disgraceful state of things which it seems our Foreign Office is powerless to mend. The time seems to have come when the plan should be taken seriously for securing a minimum of rights for prisoners in all countries. In May, 1927, the Federation of League of Nations Societies, in a plenary congress at Berlin, passed a resolution urging the matter upon the attention of the Assembly of the League of Nations, and asking for an enquiry with a view to framing an international convention. One modest demand made is that every prisoner should be entitled to a public trial within six months of arrest. Having before them a flagrant case, such as the one to which we invite attention, it behoves our Government to take the lead in urging the enquiry upon the League of Nations. We are looked to for a good example in prison conditions, and for such a lead in their amelioration. It is difficult to see why we are backward in the present instance. In the days when Palmerston, sometimes, perhaps, a little too violently, upheld the rights of British subjects, our unlucky countryman would have been tried or released soon after his condition became known; now he must languish untried three parts of a long year in a tropical prison, the state of which is likely to be very dangerous to a white man's health.

Cumulative Punishments.

The sentence of imprisonment "without the option" has long been familiar, and also the converse sentence of a fine with the alternative of imprisonment, but it does not appear to be generally known that the power now exists to inflict both. Attention is drawn to this circumstance by a recent episode at Burton-on-Trent, where the magistrates appear to have exercised their jurisdiction in a singularly appropriate case. The defendant was charged with smashing four plate-glass windows at a cycle show-room, and causing damage to the value of £50. Three of the windows had been attacked with a hammer, and when this became lodged, the fourth window was kicked in by the defendant's boot. The manager had had occasion to complain to the police about the defendant, who harboured a supposed grievance. The sentence of the court was: six months' hard labour, and also a fine of £5, and an order was made for payment of £50 as damage and £1 17s. 6d. costs, or, in the alternative, a further three months' imprisonment. Under the Criminal Justice Act, 1925, s. 24 (1), it is permissible to impose both a fine and imprisonment, and where such a composite sentence is passed, s. 27 entitles the court to order that the imprisonment in default of payment of the fine shall begin at the expiration of any term of imprisonment imposed for the substantive offence. The subject of the charge must be one of the indictable offences specified in the schedule to the Act, which includes malicious damage, and the conditions for a summary trial must be complied with. The power to order payment of a further amount, in addition to the fine, as reasonable compensation for the damage, is conferred by the Criminal Justice Administration Act, 1914, s. 14, which directs the payment to be made to the party aggrieved. It is to be noted that Stone's "Justices Manual," page 1331, states that it is not clear whether, in addition to imprisonment in the first instance, the defendant may now be ordered to pay compensation. The doubt refers, however, to cases of damage not exceeding £20 punishable on summary conviction, whereas the above case was an indictable offence dealt with summarily under the 1925 Act.

Bastardisation of Issue.

Divorce Courts and Assize judges are bound to exclude certain evidence by virtue of *Russell* v. *Russell*, 1924, A.C. 687, but no such restriction hampers the registrars of births, marriages and deaths. In a recent case the facts were as follows: The petitioner's wife left him in 1923, and in 1927 she wrote saying she had had a child by another man. The petitioner, X.Y., therefore went to the town from which the letter was written, and on searching the register of births he found that under the heading "Name and Surname of Father," his own name was entered. The petitioner demurred to this, and the register was in due course corrected by the following marginal note, which appears also on certified copies: "In Entry No. —, col. 4, omit X.Y. Corrected on the —— day of —— 19 — by me, A.B., Registrar, on production of a statutory declaration made by X.Y. and Z.Y."—the latter being the wife. The contents of the statutory declaration could not be given in evidence by the petitioner, nor could he produce the corrected birth certificate, as by so doing he would equally have been giving evidence bastardising a child which the law presumes to be his. He was entitled, however, under *Warren* v. *Warren*, 1925, P. 107, to put in his wife's letter confessing adultery, as the letter did not assert that the petitioner could have had no access at the time of conception. Non-access was proved by independent evidence, and the decree nisi was accordingly pronounced. It is a remarkable state of affairs that evidence which is inadmissible in a court of justice is accepted in a register office, but different considerations affect the two cases. In *Goodright* v. *Moss*, 2 Cowp. 591, Lord Mansfield said: "As to the time of the birth, the father and mother are the most proper witnesses to prove it. But it is a rule founded on decency, morality and policy that they shall not be permitted to say after marriage that they had had no connection, and therefore that the offspring is spurious; more especially the mother, who is the offending party." The above rule is not infringed by making and filing a declaration in the privacy of an office, and it is a matter of prime importance to ensure accuracy in the public records.

Perverting the Course of Justice:

R. *v.* Clayton and Stevens.

THAT punishment has fallen upon the two metropolitan police officers convicted at the Central Criminal Court on the 14th September last of conspiring to pervert the course of justice by agreeing to prefer a false charge, is very satisfactory.

The judge did well to point out that in a force of 20,000 men there will certainly be unworthy members. It is too often forgotten that this must be so. In an imperfect world we have to accept things as they are. We must, in a community as complex as our own, have a strong, well-organised and very numerous police force, and like any other piece of social mechanism, that force will inevitably have defects.

It is indeed true that putting a man into uniform will modify his outlook, but he will be left, after all, a more or less ordinary specimen of humanity. He will have his temptations like others. In some ways his opportunities of wrong-doing will be restricted, in others facilitated, by his special position.

In dealing with women of loose morals, themselves often constant breakers of the law, and likely on most occasions to put up with a good deal rather than provoke the particular enmity of those appointed to repress their activities, police constables have great opportunities of abusing their office, both by levying blackmail and by satisfying their own lust upon the more or less helpless creatures, whose own moral shortcomings must not blind us to the elementary right of refusal of themselves to any man they choose not to go with.

An exposure such as the present one establishes what no sensible person doubted, but what many in a blind desire to uphold authority at all costs, are too often ready to deny, that there do exist police officers who will be unscrupulous enough to take advantage of a certain class of woman, and that there are police officers who will prefer a false charge and commit perjury in support of it.

To prove that, in any particular case, a police constable has so disgraced himself is exceedingly difficult. You have an apparently respectable man, of high reputation, on one side, a woman of bad repute and loose tongue on the other. On each side you have a charge easy to be brought. The constable, if he be wicked enough, can have not the slightest difficulty in "faking" a charge such as soliciting, or using insulting behaviour. A woman, if she be abandoned enough, can fling lying and utterly undeserved accusations against an officer. Inevitably the word of the policeman must in the great majority of cases be decisive.

Even in the present instance, there were heavy chances against the truth coming to light. The woman HELEN ADELE seems at first to have thought she would plead guilty, suffer conviction, and get her small fine paid for her. The temptation, after a night's reflection, to take this line of least resistance, is very great. It is undoubtedly yielded to on some occasions when the accused is, rightly or wrongly, satisfied of her own innocence; for now and again an accused woman pleads guilty, but on hearing the constable's statement flames into hot denial. Such cases ought to be investigated with the utmost care, the plea be allowed to be withdrawn, and the accused given the benefit of any doubt. It is salutary for police officers to lose their cases sometimes, even when perhaps they are in the right. No constable should be able to count, with anything like certainty, on securing the conviction of his prisoners.

Again, the great perspicacity of the magistrate who here tried the charge against the woman, is not always present. He insisted on trying to get to the bottom of the matter, and failing to do so gave the woman the benefit of the doubt, and brought about full enquiry. Then there was, for reasons all will appreciate, a very special atmosphere present to stimulate the police to go very thoroughly into the matter. Very likely a proper investigation would have taken place in any event, but the immense public interest in recent days exhibited in police methods cannot but have had valuable reactions in a force proud of its traditions and the public trust in it. That interest, however trying and even unfair its manifestations have at moments been, is thoroughly healthy. Even unjustified criticism, not carried to too great lengths, raises in decent men a determination not to merit it. Some of the criticism was well deserved; such criticism strengthens all good elements and depresses all bad ones.

It is good that the lay judges of fact and the professional judge were at one in their view of the evidence. Fortunately the woman, who seems to have told the substantial truth, was corroborated by other witnesses: one, the boy, gave testimony which no candid mind could reject.

The sentence, considered in itself, is a light one. But to it must be added the disgrace of being cast out from an honourable body of men, branded as liars and rascals; and the loss of a career well begun. The stinging words addressed to the convicted men by the judge aptly describe their cruel and wicked crime: "You have been guilty of an offence as serious as any offence which could be committed by a police officer. You have used the power entrusted to you for the public good to attack that wretched girl who felt herself in your power, as no doubt she was."

Wills and Intestacies Bill.

[COMMUNICATED.]

I HAVE read with great interest the article by Mr. BURNS on the above subject which you published in your last issue on p. 637. The matter is of such importance just at present that I would like to offer a few comments on the views expressed by Mr. BURNS.

(1) The learned writer observes that "it is a matter of words, not of substance," when it is stated that the power of testamentary disposition is not to be fettered. I entirely disagree with him on this point. The courts or the representatives have to take into consideration many matters before they will exercise their powers; thus they are to see whether or not the will is capricious. In fact, the last paragraph of the memorandum printed with the Bill appears to me to set out the true effect of the proposed changes: "The Bill does not attempt to curtail testamentary powers of disposition, by conferring inalienable rights on members of the family . . . on the contrary, the Bill creates no beneficial interests, but merely confers powers."

It is true that the "legal rights" in Scotland *do* create "testamentary fetters," but on the view I take of Lord ASTOR'S Bill, that cannot be said of it. On the contrary, there is contrast in substance as well as in form.

(2) Whether a testator can or cannot be advised in Scotland that his proposed will is good, it seems reasonably clear that if the scheme of Lord ASTOR'S Bill in its present form is adopted in England, the specific character of the requirements proposed by the Bill will enable a legal adviser to state whether or not these requirements have been complied with. If they have, then the provisions of the Bill would not apply.

(3) Mr. BURNS seems to go too far when he makes the general suggestion that the Bill extends to remoter issue when there is nearer issue in the same line living. It only extends to such remoter issue when "the requirements" of the Bill have not been complied with as respects their ancestors who would have been entitled on an intestacy under the Administration of Estates Act, 1925. In fact, what seems to be contemplated is that remoter issue shall stand in the place of their parents or ancestors as under the Administration of Estates Act.

I agree with Mr. BURNS that the Bill does go rather far when it is made applicable to dependants not being a surviving spouse or issue. It may well be that this subject can be better dealt with by separate legislation.

(4) Contracting out of the Bill is permitted, not only in the case of ante-nuptial settlements, but also by contracts made for valuable consideration (see cl. 7 (2)). Unlike the Scots parallel referred to by Mr. BURNS, neither of these methods can be said to offer a method of "farcical" evasion of the provisions of the Bill.

(5) Finally, I agree with Mr. BURNS that the machinery of the Bill may appear somewhat complicated to anyone not familiar with the technicalities of English law. I would suggest that one or two matters, such as the details required for working out the value of the "aggregate estate" (i.e., the property made over *inter vivos* and that passing under the will), should be scheduled and the body of the Bill thereby shorn of technical complications.

The Organisation of a Solicitor's Office.

(*Continued from p.* 639.)

VII.

It is proposed to conclude this series of articles by a consideration of some letters which have been sent by certain correspondents, of whom Mr. John Trewavas has raised several particularly interesting points, with which it is now intended to deal seriatim.

Typing and Shorthand Speed.

A good typist should, admittedly, be able to reproduce at sixty words a minute from his or her shorthand notes, and unless a typist can transcribe at the minimum rate of forty words a minute on a machine, valuable time will inevitably be lost.

It is difficult, however, to base one's final estimate of the relative merits of two clerks merely by comparing their speeds. There is something to be said for the plodder who goes a long way in a long time and keeps steadily pegging away, as compared with the more brilliant stenographer who consistently takes twenty minutes longer to settle down in the morning, begins to pack up a quarter of an hour earlier at night, and does five minutes less solid work each hour. In such cases—which are more frequent than is sometimes realised—better all-round work is often turned out by the forty-five words a minute plodder than the sixty a minute spurter, so long as he or she can take down the requisite dictation at a good average speed.

Overtime.

The objection to the payment of extra remuneration for overtime, except where such overtime is appreciable and consistent, is conceded, as there is undoubtedly a certain type of clerk who would frequently persuade himself that it was necessary for him to come back and work after the ordinary hours.

Mr. Trewavas' methods seem to the writer to accord substantially with his own ideas on this point, and reference is made again to the appreciation which is felt by a staff for the occasional extra week-end holiday or unexpected half-day which means so much to them. The granting of an odd half-day every other week or so to one member of the staff is by no means the difficult proposition which is sometimes thought, particularly as most clerks are only too glad to finish off a job in their own time if they can have that extra Saturday morning which enables them to enjoy a decent week-end. After all, if a clerk happens to be away owing to illness, no serious inconvenience is usually caused if he or she returns to the office the following morning, and little notice is taken of it. If, then, this fairly represents the position in numerous offices, why should the granting of an occasional half-day at the personal suggestion and initiative of the solicitor concerned be such a rare occurrence ?

Letters.

The practice suggested by your correspondent with regard to keeping the postage book is that all letters should be signed for by the clerk who posts or delivers them, and a simple system of capital letters indicates at a glance all that is required as regards their postage. A double money column cash book is used, and each day has its heading across the page. After accounting for the stamps in hand, the letters are entered, with the name and town, in the particulars and the folio columns. If the letter is to be delivered a capital D is inserted in the narrower of the two columns, together with the time of delivery, and the initials of the person delivering it are put in the other column. If the letter is registered, a capital R is entered instead of the D, and in cases where an envelope is enclosed the letter E is added. In the case of all letters posted, the situation of the pillar-box, and the time of posting, are put in the appropriate column, together with the initial of the clerk concerned.

Mr. Trewavas states that the above procedure is more simple than might appear to be the case, and he emphasises its advantages, which are apparent. Some such system is adopted, with minor modifications, in numerous offices, and the object of recording this method in detail is to rectify any omission in this respect as regards the previous articles.

Typewritten Engrossments.

The criticism against black record ribbon engrossments is merited in many cases, particularly where the ribbon is not a good one. Indeed, this correspondent has put his finger on a matter which has troubled the writer for some time, particularly as regards endorsements, which require to be run over in ink if the risk of fading is to be removed. So long, of course, as deeds are kept in an envelope or suitable receptacle, typing is usually adequate, though clients are apt to be somewhat careless in this respect.

Work Sheets.

The advocacy of the keeping by each member of the staff of a daily work sheet (in which are entered the name of the client for whom work is done and the exact work carried out or the telephone message) and the entering up by the bookkeeper-cashier of all these items in date order on a draft bill, which is then amended and prepared for the typist by one of the principals or manager, raises difficult problems, particularly if it is necessary to consider the saving of the salary of a qualified costs clerk, as such a bookkeeper would quickly find a large part of his activities taken up in this direction.

The writer's experience—which embraces a London office, a large city office and a busy country practice—suggests that this system is beyond the capacity of the average practitioner. It has certainly much to commend it, and so long as it is taken for granted that every attendance and letter must be specifically entered up, with a view to a detailed bill of costs being rendered in all cases, it is probably necessary to a certain degree.

In the case of the single practitioner, with a comparatively small staff, however, the writer still feels that much of this detailed work can be obviated, except in special cases and in certain classes of trusts, etc., by the method suggested in one of the prior articles, whereby a summarised bill of costs, recording merely the general nature of the work done, is submitted.

It is conceded that this is not always practicable in a large office, particularly where matters pass through a number of different hands, and the object of the writer's earlier observations was to draw attention to an alternative method of drawing bills of costs to that which is frequently adopted.

With a certain type of client nothing is more disturbing than to be made to feel that every time he puts his nose inside the office he has something "chalked up" against him, even though it may only be to leave an odd paper or two and to do

little more than " pass the time of day " and confirm something already arranged. Even if no charge is made in the account itself, the objection partly remains, and there is little difficulty in practice in appreciating from the outset the kind of matters which need not necessitate, in an average practice, a minute and detailed record of every letter and attendance—so long as the second carbon copy of each letter is kept with the file of papers and a memorandum is made in the diary of the solicitor or noted on the inside cover of the papers, recording the purport of the various interviews.

Litigious Correspondence.

Mr. Trewavas' second letter suggests that his views with regard to the extravagance of language in litigious correspondence accord generally with those of the writer. He emphasises, however, that most of the debts which are put into solicitors' hands are bad, and that the debtors have previously received every consideration.

It is still considered, however, that the dignity and reputation of the profession will be maintained at a higher level in the estimation of the discerning public if the initial letter from the legal practitioner or practitioners concerned is couched more courteously and gently than is often the case. Moreover, the demand for a fee, to which there is no legal right, is apt to afford to the public further evidence of the tendency of the legal profession to think mainly in terms of costs, and even if the writer finds himself in a complete and unqualified minority among his professional colleagues, he proposes to make no apology for submitting the recommendation in this connexion which appeared in one of the earlier articles.

It is certainly true that many debtors are of a poor type, and—to use a convenient expression, " not up to much," but credit is often given under circumstances which are open to grave risk from the outset, and there is no reason why the tone of a solicitor's letter should take colour unnecessarily from the limitations or personality of the person to whom it is addressed.

As regards the invitation to suggest some other method of playing on the psychology of debtors which is more efficient than the one condemned in the earlier article, it is desired to remind this able correspondent that the creation of the debt has been due to a course of dealing between the person to whom the letter demanding payment is to be sent and his creditor, who frequently has not given proper care and thought as regards the amount of credit which should be given and has continued to accept vague promises and to supply further goods on indefinite credit until such time as he brings the matter to his solicitor and expects him to undertake an immediate frontal attack on the debtor, using high verbal explosives.

Office Routine.

The letter from Mr. Briggs is also much appreciated, but the question of going into greater detail as regards the filing of papers, record keeping and office routine generally is a complex one.

Criticism has not infrequently been meted out to articles of this nature on the ground that they are too involved, and it was felt at the outset that it would be better to confine the treatment of this subject to general principles, especially in view of the varying natures of the different types of offices.

An attempt has been made in these articles to touch upon various general ideas, which it is hoped may be of assistance to practitioners of all kinds, and an unduly detailed and elaborate exposition of a particular scheme or method may not be appreciated by the busy solicitor, who has only a limited time for reading articles of this kind.

Moreover, the ideal filing system is largely a matter of personal opinion, and is one with which the question of expense is closely linked. Some of the best systems, whilst being decidedly good, are somewhat involved and entail an expensive set of equipment. They are an undoubted improvement on the older methods, but many offices are compelled by force of circumstances to rely upon an obvious and direct filing system on an alphabetical or numerical basis.

One of the main principles to be borne in mind is that whatever system is adopted, it must be properly and consistently operated. In many offices it is not so much the general scheme which is at fault as the way it is worked, and a further point which is frequently overlooked is the importance of the particular method being known to two or three people in the same office, who should also be aware of the different places where the papers are kept and the registers recording them. Too often, all the filing arrangements are exclusively in the hands of one person, and no one else in the office has anything whatever to do with it. It is desirable that—whenever papers are periodically indexed and put away—the person concerned should have someone else with him, as this may prove of the greatest advantage at that uncertain date when a particular set of papers is required.

Another point to be emphasised is the danger of papers being mislaid as the result of being taken from the filing receptacle. A bundle of papers is taken out by one of the principals or clerks for the purpose of some supplemental matter which has arisen, and not returned, which only emphasises anew the importance of the effective operation of the system, whether the same is new or old fashioned.

Staff.

Another observation which has been made suggests the writing of an article for the staffs, as distinct from the practitioners themselves. The object of this series, however, is to call to the mind of solicitors a few practical matters connected with the organisation of their offices, and the better such organisation the happier the staff should be, assuming, of course, that the personal equation is satisfactory.

It is extraordinary what a great deal of hasty criticism and unsettled atmosphere are due to irritability consequent upon matters getting into a muddle or the detailed organisation breaking down. Incidentally, therefore, staffs should benefit from any improvement in the above respects, though it is desired to draw attention to the importance of a congenial and " give and take " spirit existing between the solicitor and his colleagues in the office.

It is generally agreed that—in the general sphere of employers and employed—it is becoming increasingly necessary to cultivate a spirit of mutual confidence and cheery co-operation. The members of the great and honourable profession of the law should surely seize every opportunity to give a lead in the direction of these worthy ideals.

[We shall conclude this series with a special article on " The Equipment of a Solicitor's Office " in the Autumn Special Number, which will be published on Saturday, 13th October.]

NOTE.—The previous articles appeared in our issues of 23rd June, 30th June, 14th July, 15th, 22nd and 29th September, and copies of these can be obtained at the offices of THE SOLICITORS' JOURNAL, 29, Breams Buildings, E.C.4.

A Conveyancer's Diary.

The Doctrine of Tacking.

An interesting discussion upon the effect of s. 94 of the L.P.A., 1925, appears on p. 183 of the current issue of *The Law Journal*. It is there observed that: " it may not be generally realised that, while in general the doctrine of tacking has been in fact to a very large extent got rid of, there is one point in which it has been extended. . . A mortgagee whose security is only equitable and does not purport to cover further advances, may nevertheless tack a further advance as against a subsequent incumbrance of which he has no notice at the time of the further advance." The writer proceeds to emphasise that this is something " entirely new " in the doctrine of tacking. With great respect it is suggested that that is not strictly so; for it

appears from *Cooke* v. *Wilton*, 29 Beav. 100, that even before 1926 a further advance might be tacked to a right to call for the legal estate, e.g., to an equitable mortgage by deposit of title deeds which gave the mortgagee a contractual right to a legal mortgage. For practical purposes s. 94 (1) (*b*) seems only to confirm this principle by protecting a further advance made by an equitable mortgagee by deposit of title deeds (who will generally have the right to call for a legal mortgage) by allowing him to acquire priority for the further advance if he had no notice of the subsequent mortgage at the time when he made the further advance : see also and compare L.P.A., 1925, ss. 13, 197 (3), 198 (2), whereby the position of equitable mortgagees by deposit of title deeds is safeguarded. In fact it is clear that where a mortgagee, A, has possession of the title deeds, no other mortgagee will be safe in making advances except subject to A's mortgage ; for the absence of the deeds would constitute constructive notice.

Section 94 (1) (*b*) is, however, in terms wide enough to enable any equitable mortgagee to tack a further advance and may in that respect have extended the application of the doctrine of tacking. In dealing with a new situation it appears to have been necessary to have regard to the fact that there may now be a succession of legal mortgages of freeholds as well as of leaseholds.

The danger of non-registration of an equitable mortgage or charge where the mortgagee does not obtain the title deeds is so generally appreciated that there should be few cases of omission to register and consequent failure to retain priority.

The writer of the article in *The Law Journal* seems to have overlooked what is decidedly a novel extension effected by s. 94 in that it enables a subsequent *legal* mortgage to be tacked to a prior mortgage and thereby to obtain priority.

Another observation made by the same learned writer calls for qualification. Since *Hopkinson* v. *Holt*, 1861, 9 H.L.C. 514, he writes " it has been settled law that, when a mortgage is made to cover further advances . . . it does not protect, as against a second mortgagee, advances made after notice of the second mortgage." In this observation the effect of s. 94 (2), as amended by L.P. (Amend.) Act, 1925, Sch., seems to have been overlooked ; at any rate the restricted meaning attributable to " notice " in s. 94 (1) (*b*) is not pointed out ; see also ss. 198, 199 (1). The principle in *Hopkinson* v. *Holt* has been modified by s. 94 (2) with the result that if the prior mortgagee took his mortgage (containing an express provision for securing a current account or other further advances) before the subsequent mortgagee registered his subsequent mortgage and does not subsequently make any search, he can tack any further advance that he chooses to make ; in other words there is very little of the principle as laid down in that case now in operation—the greater part of it having been eaten away by s. 94 (2).

Still another point requires a little amplification. Under the rule in *Clayton's Case*, 1816, 1 Mer. 572, it is pointed out, each subsequent payment to the credit of a current account secured by a mortgage goes in reduction of the previous debit, " and, therefore, improves the security of the second mortgagee, since he has priority over the subsequent drawings : *Deeley* v. *Lloyds Bank, Ltd.*, 1912, A.C. 756. Hence, this is usually avoided by the bank closing the old account on receiving notice of the second mortgage, and, if it thinks fit, opening a new account with the mortgagor."

It seems, however, that as—

(1) Section 94 (2) has so restricted the meaning of notice ; and

(2) Section 94 (1) (*c*) allows tacking, whether or not there is notice, if the mortgage imposes an obligation on the mortgagee to make a further advance,

the number of cases where a bank need, in practice, have recourse to their former practice of closing an old account and opening a new one, must have considerably diminished.

Landlord and Tenant Notebook.

Contracting out of the Landlord and Tenant Act, 1927.

Instances have occurred to the writer's knowledge where attempts have been made to contract out of the provisions of the Landlord and Tenant Act, 1927.

Undoubtedly the question is one of great importance and will require careful consideration where a lease is being entered into after the commencement of the Landlord and Tenant Act, 1927.

The material provision in the act which deals with this matter is s. 9, and that section provides that " This part of this Act " (i.e. Pt. I) " shall apply notwithstanding any contract to the contrary, being a contract made at any time after the *8th day of February*, 1927."

" Provided that, if on the hearing of a claim or application under this part of this Act it appears to the tribunal that a contract made after such a date as aforesaid, so far as it deprives any person of any right under this part of this Act, was made for adequate consideration, the tribunal shall in determining the matter give effect thereto."

The dividing line must therefore be drawn on the 8th February, 1927. Prior to that date it was open to landlords who may have intelligently anticipated the passing of the Landlord and Tenant Act, 1927, to exclude their tenants from every benefit under Pt. I of that Act.

Subsequently to that date, however, landlords of premises within the Act may be considered as being absolutely precluded from depriving a tenant of any such benefit (i.e., execution of improvements, compensation for improvements, compensation for goodwill, and a new lease in lieu of compensation for goodwill), since, if the parties expressly contract out of the provisions of Pt. I of the Act, that contract will be utterly void unless it can be shown not only that there was consideration for the tenant's signing away his rights under the Act but also that that consideration was adequate.

In other words, therefore, while a landlord may be allowed *apparently* to contract out of the Act, he is not *actually* allowed to do so.

It has to be carefully remembered that the ordinary rules of consideration do not apply to such a case.

Under the law of contract, so long as there is consideration, the courts will not concern themselves with the question of whether that consideration is adequate, since it is not the function of a court of law to make a bargain for the parties. But even under the ordinary law the fact that the consideration is inadequate affords grounds for suspicion that the contract has been entered into by duress or fraud or undue influence, and it might lead, in that event, to a rescission of the contract.

The Landlord and Tenant Act, 1927, however, by expressly providing that the consideration must be *adequate*, clearly does not intend to apply the ordinary law of consideration to a contract, whereby it is intended to deprive the tenant of his rights under that Act.

And if we are right in this conclusion, then undoubtedly further difficult questions are bound to arise.

What tests, for instance, are to be applied to determine whether the consideration is adequate ?

Some such cases will be obvious, but there may be other cases in which the consideration falls somewhat short of the amount of compensation in pounds, shillings and pence, which the court would ordinarily have awarded the tenant. Is the court in such cases to amend the contract which the parties may have originally entered into, even though they both attempted to make a fair and *bonâ fide* pre-estimate of the monetary value of the rights which the tenant would otherwise have enjoyed under the Act ? And one may consider again the case where at the time the contract was entered into the consideration adequately represented the *then* value of the tenant's rights, but where, through some unforeseen circumstances, an enormously

valuable goodwill has grown up in comparison with which the consideration for which the tenant surrendered his rights is out of all proportion. Can the tenant in such a case fall back upon his rights under the Act and repudiate his contract ?

These and similar questions appear to be of a very vexed character, but in the opinion of the writer, inasmuch as the whole policy of the Act is to prevent contracting out, and inasmuch as the Act itself would be nothing but a dead letter if the landlord could circumvent its provisions by contracts for a specious consideration, it is submitted that a tenant would not be prevented, except possibly in the case where there was a *bonâ fide* attempt to pre-estimate the value of the tenant's rights under the Act, from re-opening the whole contract, and from treating it as *pro tanto* void, where it could be shown that the consideration was in fact inadequate.

Our County Court Letter.

LIABILITY FOR DAMAGE BY FIRE.

In *Postmaster-General* v. *Latter*, 166 L.T.J. 152, the plaintiff claimed to recover the costs of repairs to telegraph wires, which were supported on posts about six yards in front of a public-house occupied by the defendant. The latter had been going upstairs one evening, and while carrying a paraffin lamp, fitted with a glass bowl, he stumbled and fell, with the result that the oil from the broken lamp set fire to the house, and the telegraph wires were damaged by the heat from the flames. The plaintiff did not base his claim on negligence, but on the rule in *Rylands* v. *Fletcher*, L.R. 3, H.L. 330, and the defendant's case was that the wires ran over private ground and were not situated upon the highway. His Honour Judge Barnard Lailey, K.C., held that, even if there had been proof of the latter circumstance, it would have been no defence, as the wires were there before the defendant became licensee of the premises, and there was no evidence that a trespass was constituted by the wires. On the other hand, there was no evidence that the defendant had kept a dangerous thing which he was under a duty to keep under control within the rule in *Rylands* v. *Fletcher*, *supra*. The lighted lamp was an article of ordinary domestic or business use, and under a section of a local Act, which has been held to be of general application, viz., the Fire Prevention (Metropolis) Act, 1774, s. 86, no action shall be maintained against any person in whose house, chamber, etc., any fire shall accidentally begin. This section, therefore, protected a man who fell while carrying a lamp upstairs, and in the absence of negligence, judgment was given for the defendant.

It is always a question of degree whether an article falls within the category of dangerous things, and the above case was distinguished on the facts from *Musgrove* v. *Pandelis*, 63 Sol. J. 353. The plaintiff's premises were over a garage, and were damaged by a fire which originated in a motor car, owing to unskilful handling by the defendant's servant. The letter wished to move the car in order to clean the back, but on the starting handle being turned, the petrol in the carburettor caught fire. The fire would have been prevented from spreading if the flow of petrol had been stopped by turning the tap in the pipe, but the defendant's servant neglected to adopt this precaution. The defendant relied on the above-named section, but the Court of Appeal held (*a*) that a motor car ready to start, in charge of an unskilled person, was an object likely to cause damage unless properly controlled ; (*b*) that the fire which caused the damage was not the original accidental fire in the carburettor, but the second fire in the body of the car, which was due to negligence. Judgment was therefore given for the plaintiff.

A decision which was followed in the first-named case, *supra*, was that in *Ross* v. *Fedden and Another*, L.R. 7 Q.B. 661. The deputy county court judge at Newcastle had held that the plaintiff, as tenant of the ground floor, could not recover damages for injury to his stock-in-trade against the occupiers of the floor above, in the following circumstances : After the premises had been closed for the day, water percolated from the defendants' water-closet owing to the valve of the supply pipe to the pan having failed to close, and the fact that the waste pipe was choked with paper. The defects could not be detected without examination, and as the defendants were not guilty of negligence, the Divisional Court upheld the judgment in favour of the defendants. Similarly in *Blake* v. *Land and House Property Corporation*, 3 T.L.R. 667, the damage was due to leakage of the ordinary domestic apparatus, and it was held that tenants who occupy anything so artificial as a house in London must take it subject to the ordinary risks.

The cases show that in deciding whether a thing is in the category of domestic articles, not dangerous in themselves, questions of damage by fire may be decided by reference to cases of damage by leakage, and *vice versa*. The actual decision in *Rylands* v. *Fletcher*, *supra*, was in reference to fluids, but the principle was extended to solids in cases such as *Tarry* v. *Ashton*, 1 Q.B.D. 314, in which an overhanging lamp fell upon and injured a passer-by, who recovered damages.

Practice Notes.

PROTECTION OF PRODUCE GROWERS.

An example of the intricate problems arising under modern legislation recently occurred at Boston. The North Holland magistrates had before them a case under the Horticultural Produce (Sales on Commission) Act, 1926, s. 1 (1) of which provides that a salesman on commission must send or deliver an account containing certain particulars to the owner or consignor. The latter is required, by s. 4, to send an advice note before the sale, otherwise the Act does not apply, and it is a good defence under s. 1 (3) if the defendant proves that the offence [*sic*] was due to a *bonâ fide* mistake or accident, in spite of all reasonable precautions, or was due to the action of some person over whom the defendant had no control. The owner or consignor is entitled under s. 2 to serve notice to produce, even before instituting proceedings, and the penalty for refusal, or destruction of records, is a fine of £20. In the above case the complainants in July had consigned to the defendant 236 bags of potatoes, on the sale of which he remitted £33 2s., without specifying the sales and his commission as required by the Act. The complainants protested at the ridiculous price realised, as they had themselves sold potatoes at the same market on the same day at £8 per ton. The defendant then agreed to pay the difference of £68 3s. 4d., making a total of £101 5s. 4d., but the summons was already issued. The defendant's case was that he always meant to go into the matter with the complainants, but the summons came and he did not know of the provisions of the Act. The bench imposed a fine of £2 on each of three summonses, with £1 costs, the maximum penalty being a fine of £20 for a first and £100 for a subsequent offence.

ADDITIONAL ASSESSMENTS.

A point which is frequently overlooked by practitioners is that the time limit for making additional assessments by the authorities was extended by the Finance Act, 1923, to six years, but that extension of time limit does not apply to executors and administrators. Section 29 (3) of the Act provides that " for the purposes of the charge of income-tax or super-tax on the executors or administrators of a deceased person in respect of the profits or gains which arose or accrued to him before his death, the time allowed for the foregoing provisions of this section shall not extend beyond the end of the third year next following the year of assessment in which the deceased died." This is an important provision, for we have frequently heard of cases where the Revenue authorities

have sought to raise assessments, or to reach compromised back duty settlements, to cover years far beyond the three years limit. The powers of the Revenue authorities in respect of the back duty liability of a deceased person are limited to the three years already referred to and, although officials sometimes suggest the payment of a lump sum to cover duty lost to the Revenue for many years past, plus "mitigated penalties," in such cases they have no legal authority for the demand. Executors and administrators will realise their own legal and moral liability in the matter.

Correspondence.

Doctors and Lunacy Law.

Sir,—It may interest your readers to know that at the annual meeting of the National Society for Lunacy Reform, the Chairman (Mr. J. W. J. Cremlyn) referred to the increasing danger of bureaucracy and departmental activity. He not only made no attack upon the medical profession as such, but held them out as "a body of most generous and honourable men," and in his opinion "the very last people who ought to invite the State to permit them to take away the liberty of individuals on the ground that they were lunatics and not safe to be allowed to go about freely among their fellow men—without being compelled by statute to act with good faith and reasonable care."

There was no doubt however that some members of the medical profession resented their conduct being reviewed by a jury. They held that they alone should be the judges of insanity and that the judicial authority should act upon their certificates and absolve them from any consequences that might follow if they had, in fact, come to a wrong conclusion.

Mr. Cremlyn said that he was in favour of complete immunity for the medical profession, provided that they gave their evidence—not by certificate—but upon oath, and subjected themselves, like any other witness, to cross-examination. He instanced the fact that in a comparatively trivial matter such as drunkenness no court would accept a certificate from a medical man that the accused was drunk. To argue as the doctors seem to do that a jury is incompetent to decide medical questions is stupid. Juries are entrusted with other matters quite as complicated, and to allow doctors, however competent, to be both judge and jury is intolerable and foreign to the whole spirit of our constitution.

Quite recently a case of scarlet fever was mistaken for lunacy—the sufferer certified and sent to an asylum.

What this society is determined to fight for is the recommendation of the Royal Commission in Lunacy, and "what we really want is a Lunacy Reform Bill," as you truly remark in your issue of last Saturday.

FRANCIS J. WHITE,
Secretary,
National Society for Lunacy Reform.

60, Avenue Chambers,
Southampton Row,
London, W.C.1,
26th September, 1928.

Books Received.

The Secretary's Guide to the Companies Act, 1928—being a Supplement to The Secretarial Handbook. E. WESTBY-NUNN, B.A., LL.B. 8½ × 5½. 39 pp. The Solicitors' Law Stationery Society, Ltd., London: 22, Chancery Lane, W.C.2; 27 & 28, Walbrook, E.C.4; 6, Victoria Street, S.W.1; 54, Theobald's Road, W.C.1; 15, Hanover Street, W.1. Liverpool: 19 & 21, North John Street. Glasgow: 66, St. Vincent Street. 1s. net.

Criminal Appeal Reports Index-Digest of Vols. 1-20 (May. 1908—May, 1928). With a complete Index of Appellants' Cases and Statutes referred to. By HERMAN COHEN, London: Sweet & Maxwell, Ltd. 1928. 218 pp. £1 10s. net.

Legal Parables.

X.

The Solicitor and his two Clients.

OF course he had lots of other clients, for he was capable, conscientious and experienced. But these two happened to come to him on the same day, and each wanted him to defend a case in the local police court.

The first was charged with assault, and he certainly looked his part. Moreover, he admitted it with some pride; but he insisted that he was justified and rather wanted to do it again. He refused the suggestion that a plea of guilty, an apology, and a tactful speech was the best line: there must be a good fight in open court. So the solicitor reluctantly accepted his instructions.

The second had to meet a rather more serious accusation, and was quaking in his shoes. To him also the solicitor listened patiently. He thought it just possible that he might get his client off, if he had a free hand. The client said he could do whatever was best, and no price should be too high, and so forth—all of which the solicitor had heard many times before.

In the first case the defendant got two months, after a stormy hearing; but he wrung his advocate warmly by the hand as he left the dock, said he could do his time on his head and with a good heart, and vowed that it had been a jolly good fight and they'd jolly well shown up the other side. And his friends promptly paid the fee.

In the second case, the solicitor listened carefully to the evidence for the prosecution, reserved cross-examination, finally submitted no case in the absence of requisite corroboration, and secured a dismissal. Whereupon his client, who had quickly recovered his composure, informed his solicitor that he had not done much so far as he could see, and for that matter he might just as well have done it by himself without any lawyers. He has not yet paid the bill.

Moral: Well, the solicitor is still wondering what the moral really is, and so am I. "LEX."

SERVICE AT WESTMINSTER ABBEY.

FRIDAY, 12TH OCTOBER, 1928.

On the occasion of the re-opening of the Law Courts, a Special Service, at 11.45 a.m, will be held in Westminster Abbey, at which the Lord Chancellor and His Majesty's Judges will attend.

In order to ascertain what space will be required, Members of the Junior Bar wishing to be present are requested to send their names to the Secretary of the General Council of the Bar, 5, Stone Buildings, Lincoln's Inn, W.C., before 4 p.m. on Thursday, the 11th October.

Barristers attending the Service must wear Robes. All should be at the Jerusalem Chamber, Westminster Abbey (Dean's Yard Entrance), where robing accommodation will be provided, not later than 11.30 a.m.

A limited number of seats in the South Transept will be reserved for friends of Members of the Bar, to whom two tickets of admission will be issued on application to the Secretary of the General Council of the Bar.

No tickets are required for admission to the North Transept, which is open to the public.

MARRIAGE SETTLEMENTS.

It may interest the profession to know that draft forms of Marriage Settlements, settled by Sir Benjamin Cherry, LL.B., are now on sale. They are published by The Solicitors' Law Stationery Society, Limited, 22, Chancery Lane, W.C.2, and branches.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers only are answered gratis. All questions should be typewritten (in duplicate), addressed to—The Assistant Editor, 29, Breams Buildings, E.C.4, and should contain the name and address of the subscriber. In matters of urgency, answers will be forwarded by post if a stamped addressed envelope is enclosed. No responsibility is accepted for the accuracy or otherwise of the replies given.

Settled Land—Representation—Assent upon Trust for Sale.

Q. 1426. By his will, dated in 1910, a testator appointed A, B and C to be his executors and trustees, and after giving certain legacies he devised Whiteacre to the use of his wife during her widowhood without impeachment for waste, and he empowered his trustees to do substantial repairs to Whiteacre as they might think fit, and after the death or re-marriage of his wife he directed that Whiteacre should fall into his residuary estate, which he gave to his trustees upon the usual trusts for conversion, payment of debts etc., and investment—the income thereof to go as to one-half to his wife during widowhood with remainder to his children for life, with trusts over, and as to the other half to his children for life with trusts over. The testator's wife died in 1927, and it is desired to appoint new trustees of the will in the place of one of them who has died, and of another who desires to retire. All the testator's children are living and of age. The will of the testator's wife has been proved by her executors who are different persons altogether. (1) Will it not be necessary to take out a special grant to the wife's estate in favour of preferably the surviving trustees of the testator's will? (2) Then for these trustees to assent to the devise to themselves of Whiteacre? (3) Then for the surviving trustees to appoint the new trustees, trustees of the personal estate, and for the same persons *quâ* special trustees to appoint the new trustees, trustees of Whiteacre?

A. (1) and (2) If a general grant has been obtained, this will include the land vested in the widow as tenant for life, and the general executors can assent to the trustees of the testator's will upon the trusts of that will. (3) Yes. The surviving trustees will appoint the new trustees in favour of whom the executors will then assent.

Will—Trust for Accumulation during Life of Annuitant—Residue settled in Succession—Effect.

Q. 1427. A, by his will, bequeathed his estate unto trustees, upon trust to pay to his wife, B, an annuity, and the words of the will following this bequest are: "I declare that during the life of my said wife the surplus income of the trust estate shall be invested by my trustees and go in augmentation of the capital of my said trust fund And from and after the decease of my said wife I declare that my trustees shall stand possessed of the income of the trust estate and the income of all augmentations thereof" upon trust to divide the same between certain persons named during their lives. On the death of these persons the estate goes to persons named in the will. B recently died and the trustees had then in hand by way of income placed in the bank sufficient to pay her annuity as from the date of last payment to her up to the date of her death and a balance for investments as "surplus." The estate consists of realty, investments on mortgage securities, and holdings of shares in public companies. Must the income derived from all (or from any part) of the estate actually received after the death of B be apportioned and so much thereof as is proportionate to the period prior to her death be invested as "surplus"? Or is the surplus only so much of the income actually in hand at her death as was not required to pay her annuity up to that date?

A. Since the reversionary trusts are not absolute, the opinion is here given that the principle of *Wharton* v. *Masterman*, 1895, A.C. 186, does not apply, and that, in accordance with *Elborne* v. *Goode*, 1844, 14 Sim. 165, and *Mathews* v. *Keble*, 1867, L.R. 4 Eq. 467, the direction for accumulation was valid for twenty-one years after the testator's death, but not longer, the heir or next-of-kin taking income after that period in accordance with the nature of the property. It is not stated whether the statutory period of twenty-one years has been exceeded. The last two cases were decided on the Accumulations Act, 1800, repealed L.P.A., 1925, s. 207, and 7th Sched., but the repeal saves acquired rights, and the former Act is, in effect, re-enacted in s. 164. Whether the statutory period for accumulation has been exceeded or otherwise, the persons interested in the surplus income before the death of B are not identical with those interested in such income after, and the opinion here given is that the former, whether reversioners (whose capital will be augmented), heir, or next-of-kin, are entitled to have that income apportioned under the Apportionment Act, 1870. If the statutory period of twenty-one years has not expired, the apportioned income up to B's death, after providing for her annuity, will be invested by the trustees as capital.

Trustees—Exercise of Discretion by Sole—Power.

Q. 1428. With reference to our query under the above heading, we have referred to *Q.* 864, in which the facts were peculiar and complicated, for which reason, no doubt, Pt. IV, para. 1 (4) of the 1st Sched. to L.P.A., 1925, was considered to apply. In the present case it is assumed that the surviving trustee has power to release the term of 3,000 years, plus one day, vested in him as mortgagee, provided that the power contained in the trust deed is wide enough for that purpose. A copy (in triplicate) of cl. 9 is sent herewith, and an opinion is desired on this point as well as a reference to an appropriate precedent:—

Clause 9.—Power for Trustees before they shall have entered into possession of mortgaged premises upon application of Company to concur in selling all or any of the mortgaged premises to the same extent as if the trust for sale had arisen and to exchange any part or parts of the mortgaged premises for other lands or hereditaments of any tenure and either with or without making or receiving any payment for equality of exchange and to execute make and do all acts deeds and things necessary for carrying into effect any of the matters aforesaid and give receipts and discharges as fully as if the trust for sale had arisen and any lands or hereditaments receivable upon any exchange shall be conveyed to the Trustees and held by them upon the trusts and with and subject to the powers and provisions therein declared with reference to the mortgaged premises.

A. The money in question does not appear to have arisen under the trust for sale at all, and, having regard to the definition of "trust for sale" in s. 205 (1) (xxix) of the Act the opinion is here given that s. 27 (2) (as, of course, re-drafted by the L.P. (Am.) A., 1926, Sched.) does not apply, because the trust for sale was not one within the definition. Under the new legislation, the position of mortgagees who take security by way of trust for sale occasions some difficulty, but it was dealt with in the answer to *Q.* 864, pp. 578-580, Vol. 71, to the conclusion that they take the usual 3,000 years' term (plus the appropriate number of days for puisne mortgages) under the 1st Sched., Pt. VII. See also s. 85 (3), recognising the practice. The conclusion above is therefore agreed on s. 27 (2), as amended. The further question whether the trustee or trustees of the deed may, so to speak, give bounty

to the mortgagors by releasing part of the security without consideration, must be answered by reference to the terms of the instrument.

Settled Land—Pre-1926 Settlement—Sole Trustee also Tenant for life—Mortgage of Fee with Consent of some Reversioners before 1926—Title.

Q. 1429. In 1918 certain property was conveyed to J.P. and A.J.P. as joint tenants, they being in fact trustees of a settlement under which the property was held in trust for J.P.'s wife for life and then to J.P. for life, and after their deaths in trust for their children. In 1918 the said A.J.P. died and subsequently J.P. mortgaged the property, his wife joining in as surety there being also a separate charge by such of the beneficiaries as were then of age on their shares in the proceeds. It is desired to sell the property. J.P. cannot very well make a title as surviving joint owner, as in this case we assume he would have to pay the duty on the death of A.J.P. in respect of A.J.P.'s apparent interest in the property, and the duty should, of course, in reality be paid on the money when the persons entitled to the life interest dies. Can J.P. make a good title by appointing a new trustee to act with him and vest the property in himself and such new trustee as trustees for sale ?

A. J.P. presumably conveyed the legal estate to the mortgagee in 1918, but, from the form of the mortgage, it seems clear that the latter had notice of the fact that J.P. could not bind the interests of the infant reversioners. This being so on 31st December, 1925, the opinion is here given that the legal fee simple vested in J.P.'s wife on 1st January, 1926, as tenant for life of the settlement under the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*a*) and (*c*), and Pt. VII, para. 3. She can therefore sell as tenant for life after the trustee or trustees of the settlement for the purposes of the S.L.A., 1925, have executed a vesting deed in her favour: see 2nd Sched., para. 1 (2). The question does not shew whether J.P. was such a trustee under s. 30 (1) (i) to (iv), but, if not, either all the beneficiaries *sui juris* should appoint two such trustees under para. (v), or the court must be invoked under the 2nd Sched., para. 1 (3), for the vesting deed is indispensable under s. 13. The exact position of the mortgagee may be open to question, but a purchaser properly advised will certainly require him either to convey his interest or to be paid off. The title will shew that no death duties were payable on the death of A.J.P.

Joint Tenants subject to Jointure Rent-charge—Power to Convey.

Q. 1430. Under a compound settlement constituted by a settlement dated 1898 and a will dated 1899 certain freehold land stood settled under which A was tenant for life, subject to a family jointure rent-charge and a term of years limited to trustees for securing the same. In 1907, A, as tenant for life, conveyed the land to B in fee simple, subject to the rent-charge and term, and in the deed A covenanted with B to pay the rent-charge and to indemnify B against payment. In 1925 B conveyed the fee simple to C and D as joint tenants, subject to the rent-charge and term of years, but with the benefit of A's covenant contained in the 1907 conveyance. The jointress is still living, and C and D have now agreed to sell the land subject to the rent-charge, but with the benefit of A's covenant of indemnity. In *Re Gaul and Houlston*, 1928, W.N. 45, Clauson, J., held that persons who, immediately before 1st January, 1926, were joint tenants subject to a family charge cannot make title as trustees for sale holding upon the statutory trusts. L.P.A., 1925, 1st Sched., Pt. IV, applies only where land was held in undivided shares, and although s. 36 provides that where land is vested in joint tenants they shall hold on trust for sale, this section expressly excepts "settled land." "Settled land" under that section means "settled land" within the S.E.A., 1925, and owing to the rent-charge the land in question is "settled land" under the last-mentioned Act. Seeing that C and D do not hold on trust for sale, can they sell and convey as beneficial owners by virtue of s. 2 (2) of the L.P. (Am.) A., 1926 ?

A. C and D can sell subject to the jointure and with the benefit of the covenant by virtue of s. 2 (2) of the L.P. (Am.) A., 1926.

Commons—Land thrown into Commons—Non-productive—Demand for Tithe—Rent-charge—Whether justified.

Q. 1431. A local authority under the Commons Act, 1889, have, by a scheme duly sanctioned by the Ministry of Agriculture and Fisheries, been entrusted with the management and regulation of such land styled a heath. Prior to the scheme a railway company acquired under their statutory powers a certain portion of such heath for railway purposes, and acquired other lands as compensation for the common land taken away, which were subsequently thrown into and form part of the heath, to become vested in the owner for the time being of the heath, subject to the common and other rights now enjoyed over or in respect of that heath, and also in satisfaction of all common and commonable rights now enjoyed over and in respect of the portion of the said heath which the company were authorised to take. Under the Tithe Acts, 1836-1925, a demand has been made on behalf of the Trustees of Queen Anne's Bounty, as the trustees for the local benefice, to such local authority, as occupier, for payment of an ecclesiastical tithe rent-charge in respect of the land so added to the heath, which is not cultivated land or used for any purpose whatever, and, further, no tax is payable under the Income Tax Acts or other parochial rates in respect of this heath or supplemental land. Your opinion is asked on the following points :—

(*a*) Can the demand which has been made be legally enforced ?

(*b*) Should the local authority apply at the time of the demand for a remission of the tithe rent-charge, since no income tax or other rates are payable in respect of the heath or the supplemental land ?

(*c*) Since the soil of the heath and presumably the supplemental land is vested in the Crown, is it thereby exempt from tithe ?

(*d*) Is the common land or the land added to the heath subject to tithe ? and

(*e*) Authorities on all the points raised.

A. The old rule as to tithe was that, if the owner of particular land so used it that no valuable produce resulted from it, the tithe of its production thus being valueless, the tithe-owner had no remedy, see *R.* v. *Nene Outfall Commissioners*, 1829, 9 B. & C. 875. No one is personally liable to pay tithe rent-charge, which is recoverable by distress and entry, see Tithe Act, 1836, s. 67. It is to be presumed that, in the circumstances, this remedy would be useless. *Prima facie*, therefore, tithe rent-charge is not payable, and the Trustees of the Bounty should be requested to state on what grounds they base their claim. In answer to the specific questions :—

(*a*) No, as above, unless possibly some previous owner of the land has charged it by specific agreement, and that agreement binds the present owners, or unless in respect of rights of pasturage, etc., or modus or composition.

(*b*) If there is no tithe rent-charge payable, this does not arise.

(*c*) The exemption arises from its state of non-production.

(*d*) No, subject as above.

(*e*) The questioner is referred to the case and Act of Parliament mentioned above.

Ejectment of Vendor.

Q. 1432. M (a widow) purchased a certain freehold dwelling-house, yard and premises in 1894. She resided in the house from that date right down to the 29th March, 1926, when the

whole of the property was sold by her to R in pursuance of a written contract in that behalf and which contained a provision for vacant possession on completion. When the time to complete arrived, M only gave up possession of the yard and premises, pleading that she had no other house to go to, and R therefore carried out the contract, informing M that he could only allow her to remain in the house temporarily, as he required early possession of same, and that during her occupation the rent would be 10s. per week. This sum has been duly paid to date, but R now wishes to bring an action for possession.

(*a*) If he legally determines the occupation or tenancy of M, can he succeed in a claim brought under s. 137 of the County Courts Act, 1888 ?

(*b*) Is the house within the application of the Rent Acts, and if so, why ?

(*c*) If ever controlled, is same decontrolled by virtue of s. 2 (1) of the Act of 1923 ?

(*d*) If the answer to (*c*) is in the affirmative, then is the authority the case of *Finey* v. *Gougoltz*, 1926, 11 K.B. 322 ?

A. (*a*) Under the arrangement made on completion, M became a weekly tenant. On the determination of this tenancy by notice to quit, R can succeed in a claim under s. 138 (not 137) of the County Courts Act, 1888.

(*b*) The house is not within the Rent Acts, as under the decision of the Divisional Court in *Ratkinsky* v. *Jacobs*, 72 Sol. J. p. 354, the word "landlord" in s. 2 (1) of the Act of 1923 means the owner of the premises. Although there was no letting and no tenant at the date of the Act of 1923, and therefore no landlord in the technical sense, this state of affairs will not prevent the house from having the status of decontrol at the present time. See "Landlord and Tenant Notebook," 72 Sol. J. p. 529.

(*c*) Decontrol is now possible in the case of a house to which the Acts have not previously applied, on the construction of s. 2 (1) of the Act of 1923, recently adopted in *Ratkinsky* v. *Jacobs*, *supra*.

(*d*) The authority is the last-named case, following *Finey* v. *Gougoltz*, 1926, 2 K.B. 322.

Conveyance—Adjustment of Boundaries.

Q. 1433. A. purchased in 1922 a plot of land from C, being part of a larger plot of which C was the owner. B is now negotiating for the purchase of the remainder of the plot which was retained by C, but it is found that A has erected a fence on the boundary line between the two plots (A's and that retained by C) which does not however represent the real boundary of the land which was defined by a plan on A's conveyance. The fence encroaches a little way on to the land which B is now buying, owing to a line of trees which made it more convenient for A to attach the fence to, B is quite willing that the existing fence should represent the legal boundary but to effect this it appears that it will be necessary (presumably after B has completed the purchase of his land) to make a conveyance of the small strip of land between the fence and the real boundary line to A. This would cost rather a lot and would necessitate fresh plans, etc., which would perhaps make it more than the piece of land is really worth. Would you mind suggesting if there is any other way in which the matter could be adjusted, as by easement or otherwise, so as to put the matter on a satisfactory legal basis ? Would it be wise to rely on the Statute of Limitations to give A his title to the extra strip of land, which would presumably be in 12 years from 1922 ? It is understood that A is really at fault in having caused the difficulty in the first place, but B is anxious to give him the piece of extra land as he is getting a corresponding right in exchange, in the matter of a weir at the other end of the property. I trust I have explained the difficulty clearly but will of course be delighted to give any further information necessary.

A. Presumably some document will be entered into in connexion with the right in respect of the weir to be acquired by B, and we would suggest that the matter could readily be adjusted in this document. If, however, this cannot be done, we would suggest that the conveyance to B should be of his purchase less, however, A's encroachment, and that the conveyance should contain recitals (which will in fact be fictitious, but will operate by estoppel) that C in 1922 sold A the land actually conveyed to him, and the encroachment, but that the encroachment was in error omitted from A's conveyance ; that A being entitled to call for a conveyance of the encroachment, the legal estate in the same by virtue of the transitional provisions of the L.P.A., 1925, vested in him on the 1st January, 1926. A should be given a plain or attested copy of the conveyance to B and an acknowledgment and undertaking in respect of the original. If the plan for the conveyance to B is already prepared it would, we suppose, be a simple matter to show the encroachment thereon by another colour. We do not favour relying upon the statutory title as B will get the title deeds.

Redemption by Wife of Husband's Mortgage—Resulting Trust.

Q. 1434. About twenty-five years ago A purchased certain freehold property, and the property was conveyed to him. A was not possessed of any means, and the whole of the purchase money was found by a brother-in-law, who took a mortgage on the property to secure the amount. Subsequently the mortgage was paid off by A's wife out of her own moneys. Until the mortgage was paid off A's wife paid the interest on the mortgage. At the end of 1927 A died intestate. A's wife has no written evidence whatever of the payment of the money by her. Apart from the freehold property standing in his name A was not possessed of any other estate except personal chattels. The purchase money for the property having been found by A's wife can she now claim the property or must the residuary estate of the deceased be dealt with in accordance with s. 46 of the Administration of Estates Act, 1925. Can A do anything to oust the operation of that section ?

A. We suggest (though with some difficulty) that, as all interest and principal was paid by the wife, the position is equivalent to a purchase by the wife in her husband's name. No presumption of advancement would arise (*Mercier* v. *Mercier*, 1903, s. 2 Ch. 98), and a resulting trust in favour of the wife would exist. Parol evidence would be admissible (*Rochefoucauld* v. *Boustead*, 1897, 1 Ch. 196) to prove the payments by the wife. Enquiry should be made as to the true intention of the parties, and as to who enjoyed the rents and profits and paid outgoings.

Intestacy Prior to 1926—Dower—Sale on Cesser.

Q. 1435. A bought a small plot of freehold land in Essex in 1906 for £44, and died in October, 1910, intestate, leaving a very small estate, the whole being valued at under £300. A left a widow B, and two sons, the eldest and heir at law being C. Letters of administration to all A's estate were granted to B in October, 1911, and all the testator's debts have long since been paid. There is no declaration in the conveyance to A barring dower, and therefore C was entitled to the land subject to B's right of dower. This was never assigned by metes and bounds, nor was any conveyance made by B to C. C allowed B to remain in possession of the land during her lifetime or in receipt of such rents and profits (if any) as there might have been. B died in January, 1928, leaving a will in which she appointed her two sons C and D to be executors, and gave everything to them equally. B left very little estate, and it is not proposed to prove her will. C has now instructed us to sell the plot of land for £150, and we shall be obliged if you will advise the simplest way of making title, having regard to the small value of the land. C was of age on the 1st January, 1926.

A. We are of opinion that the legal estate (subject to the dower interest) vested on 1st January, 1926, in C (L.P.A., 1925, Sched. I, Pt. II, paras. 3 and 6 (*d*)), and he can therefore now sell as beneficial owner. If any doubt is felt as to the accuracy of this view, a grant *de bonis non* must be obtained to A's estate, so that an assent or conveyance (so far, if in any, degree as may be requisite) may be made by the administrator *de bonis non* to C.

L.P.A., 1925—Transitional Provisions—Resulting Trust—Intention to Settle.

1436. *Q.* In 1919 a small house was conveyed to A in fee simple. It now transpires that the purchase-money was found by B, a sister-in-law to A, the intention being that the property should be held for the benefit of B during her life, and on her death it should go to C, the son of A, who was then an infant. B is now desirous of raising a loan from her bankers on the property and asks that the deed or deeds necessary to carry out the original intention should be prepared. It seems to us that two methods are available: (1) A deed of trust or settlement followed by a vesting deed; or (2) For A to execute a declaration of trust showing that he holds the property in trust for B for her life and then for his son absolutely. If (2) can be adopted it would save expense in stamp duties, although a vesting deed would still appear necessary. Please advise the best course to pursue, and whether suggestion (2) might be safely adopted.

A. There can be no settlement within S.L.A., 1925, or the repealed Acts without an "instrument," and therefore, whether or not B is bound by the intention to settle on the 1st January, 1926, the legal estate, by virtue of the resulting trust, vested in B: L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*d*).

A should make a statutory declaration to prove that the purchase was made in his name with B's money. B can then give the bank a sound security.

Alternatively, A, by concealing the recent or resulting trust, could give the bank a good security if he has the deeds: L.P. (Amend.) A., 1926, Sched.

We express the opinion that B is not bound by the mere intention to settle, the purchase in A's name being explicable on other grounds than an intended settlement.

Freehold House—Name—Exclusive Use.

1437. *Q.* A client of ours is the owner of a property described in his title deeds as "known by the name of 'Longacre,'" and had let it on a long lease expiring in 1929 to tenants who have carried on the business of a boarding-house. The house was previously a lodging-house. The tenants have now surrendered the lease, and the landlord has sold the property. The tenants propose to call their new house (which is in the same neighbourhood) "Longacre." Can they be restrained from doing this? The name "Longacre" was attached to our client's house before these tenants entered into possession. Can you refer us to any cases on the point?

A. We do not think that the owner of a freehold house has any exclusive right to the name of it, but possibly a common law right exists to restrain another person from making fraudulent use of it. In this case, however, the tenants presumably had built up a goodwill in connection with the name, and any goodwill attaching to the premises as a lodging-house would appear to be dead or merged in the goodwill of the boarding-house. We therefore do not think your client has any right of redress. We regret that we can trace no cases on the point.

Duration of Trust—Sale by Surviving Trustee.

1438. *Q.* Can a sole surviving executor and trustee for sale of a testator who died in 1889, having devised his residuary real and personal estate to his executors and trustees upon trust for sale, now sell and give a good title to testator's leasehold property as personal representative, without appointing an additional trustee?

A. A sole executor can sell and give receipt: see "Everyday Points in Practice," pp. 409-413. As to whether he could or should sell as executor to a testator who died in 1889, see pp. 198, and 416-419. As to the duration of a trust for sale, see L.P.A., 1925, s. 23. The legal advisers, even of a willing purchaser, would object to blind acceptance of title as executor in such circumstances.

Obituary.

Judge C. F. DOYLE.

His Honour Charles Francis Doyle, Judge of the East Circuit Court of the Irish Free State since 1924, died suddenly in Dublin on Saturday, the 29th ult., at the age of sixty-two. The second son of the late Mr. D. Doyle, solicitor, Limerick, he was educated at Trinity College, Dublin (where he took his M.A.), and was an ex-Scholar and Senior Moderator, and won the Berkeley and Vice-Chancellor's Gold Medal and also the three medals of the College Historical Society. He was called to the Irish Bar in 1881 and to the English Bar by the Middle Temple in 1902. Mr. Doyle was formerly Professor of the Law of Property and Contracts, University College, Dublin, and served as County Court Judge and Chairman of Quarter Sessions for County Mayo from 1910 until the abolition of that office four years ago.

Mr. FRANK ALLEN.

Mr. Frank Allen, solicitor, Doncaster, died on Wednesday the 19th ult. Mr. Allen, who was admitted in 1895, had held the appointments of Coroner for the Doncaster Division of Yorks, Clerk to the Bentley-with-Arskey and Adwick-le-Street Urban District Councils and also Clerk to the Commissioners of Taxes for the Lower Strafforth and Tickhill Division. He was well known throughout the district and has left a wide circle of friends.

Sir T. M. FRANKLEN, LL.D.

Sir Thomas Mansel Franklen, LL.D., Barrister-at-Law, Clerk of the Peace, and of the Glamorgan County Council, died on Saturday at his residence, St. Hilary, Cowbridge, at the age of 68. He was called to the Bar by Lincoln's Inn in 1855, and was knighted in 1921.

Mr. C. A. TACKLEY.

Mr. Charles Adolphus Tackley, Solicitor, 148, Westbourne Grove, and 123, Wigmore Street, W.1, a member of the firm of Messrs. Tackley, Fall & Read, died suddenly in his office on Tuesday, 25th ult., at the age of 62. Mr. Tackley was a member of The Law Society, and of the Solicitors' Benevolent Association, and was admitted a solicitor in 1892.

H.

Societies.

Law Students' Debating Society.

At a meeting of the society held at The Law Society's Hall, on Tuesday, the 2nd inst. (Chairman, Mr. W. M. Pleadwell), the subject for debate was "That this House considers the dominant tendencies in present-day education are a menace to the prosperity of the world." Mr. C. F. Spurrell opened in the affirmative; Mr. P. H. M. Oppenheimer opened in the negative. The following members also spoke: Messrs. H. Shanly, Miss M. W. Prothero, L. T. Tucker, W. J. Boyes, D. M. T. Coles, Miss D. C. Johnson, Miss C. M. Young, E. E. Pugh, and T. M. Jessup. The opener having replied, and the chairman having summed up, the motion was lost by four votes. There were fifteen members and four visitors present.

Rules and Orders.

THE AGRICULTURAL CREDITS REGULATIONS, 1928, DATED SEPTEMBER 24, 1928, MADE BY THE LORD CHANCELLOR UNDER THE AGRICULTURAL CREDITS ACT, 1928 (18 & 19 GEO. 5, c. 43).

I, the Right Honourable Douglas McGarel Lord Hailsham, Lord High Chancellor of Great Britain, by virtue and in pursuance of the Agricultural Credits Act, 1928, do hereby make the following Regulations for the purpose of carrying the said Act into effect :—

1. *Form and particulars in Register.*]—The register directed by the Act to be kept at H.M. Land Registry shall contain the following particulars ;—

(1) The date of the instrument creating the charge ;

(2) The surname and Christian names of the farmer or farmers or name of the society whose farming stock and other agricultural assets are affected ;

(3) The amount of the loan ;

(4) Whether the charge is a fixed or floating charge or both ;

(5) The name and address of the Bank in whose favour the charge is made ;

and shall be in such form and may contain such additional or alternative particulars (if any) as the Land Registrar may from time to time determine.

2. *Form of Application.*]—(1) Applications for registration, searches (official and otherwise), official certificates, certified copies of or extracts from the register or such memoranda filed thereunder as are open to public inspection, shall be made on and shall furnish the particulars set forth in the several forms for these purposes given in the Schedule hereto, or on such other forms as the Registrar shall from time to time determine.

(2) Applications shall not, unless the Registrar otherwise directs, be accompanied by the original instruments in respect of which they are made.

3. *Cancellation of registrations.*]—(1) Applications for the cancellation of a registration on discharge of the charge shall be made on and shall furnish the particulars set forth in the form given in the Schedule hereto, or on such other form as the Registrar shall from time to time prescribe.

(2) Such evidence in respect thereof as the Registrar shall think necessary shall also be furnished if required.

4. *Rectifications of the register.*]—On rectification of any entry in the register, such particulars, explanation and evidence in respect thereof as the Registrar shall think necessary shall be furnished.

5. *Posting of Applications.*]—Applications accompanied by the prescribed fee must be sent by prepaid post addressed to the Agricultural Credits Superintendent, H.M. Land Registry, Lincoln's Inn Fields, London, W.C.2.

6. *Priority of Applications for registration.*]—(1) Application for registration delivered by post or under cover during the hours in which the office is open for registration shall be treated as having been made or given at the same time and immediately before the closing of the office for that day and shall be numbered accordingly.

(2) Application for registration delivered by post or under cover between the hours of closing and of the next opening of the office for registration shall be treated as having been made or given at the same time and immediately after such opening and shall be numbered accordingly.

(3) In reckoning the number of days under section 9 (1) of the Act in which registration shall be affected, Sundays and other days when the Registry is not open to the public shall be excluded.

7. *Responsibility for accuracy etc. of applications.*]—Save in the case of applications for the modification or cancellation of a registration on discharge of the charge, the Registrar shall not be concerned to inquire into or otherwise verify the accuracy, validity or sufficiency of any matter or thing stated or appearing in any notice given or application made to him.

8. *Official Searches.*]—(1) Applications for an official search shall be prepared on the prescribed form and forwarded to the Registry in duplicate.

(2) An official certificate of the result of searches shall extend to registrations effected during the day of the date of the certificate, and shall be issued only after the office is closed for registration on that date.

9. *Certified copies.*]—For the purposes of sub-sections (5) and (6) of section 9 of the Act the official stamp of H.M. Land Registry shall be a sufficient authentication on behalf of the Land Registrar of the certified copy of entries in the register.

10. *Sale of Forms.*]—(1) All forms except such as may from time to time be issued by direction of the Registrar free of charge shall be sold under arrangements to be made by H.M. Stationery Office, or otherwise as the Registrar may from time to time approve.

(2) No forms other than those so issued, sold or approved shall be accepted for registration.

11. *Interpretation.*]—In these regulations "the Act" means the "Agricultural Credits Act, 1928," and words or expressions, defined in the Act, have the same meaning in these Regulations as in the Act.

12. *Short title and commencement.*]—These Regulations may be cited as the Agricultural Credits Regulations, 1928, and shall come into operation on the first day of October, 1928.

Dated the 24th day of September, 1928.

(Sgd.) *Hailsham*, C.

THE SCHEDULE.

REGISTRATION IN FARMER'S NAME.
[Form A.C.1.]

The of
hereby applies for the registration of this memorandum of an Instrument in writing creating an Agricultural Charge under the above Act, short particulars of which are given in the Schedule below.
Signature of Applicant on behalf of Bank :—
Address :—
Date :—

Schedule of Particulars.

Date of Instrument
Name, address and description of farmer whose farming stock and other agricultural assets are affected.
Surname :—
Christian names :—
Address and description
Amount of the loan £.....
The charge is a.....charge.
Name and address of the Bank in whose favour the memorandum of charge is registered :—
Name :—
Address :—
I hereby concur in the above application.
Signature of Farmer :—

REGISTRATION IN NAME OF AN AGRICULTURAL SOCIETY.
[Form A.C.2.]

The of
hereby applies for the registration under section 14 of the Act of this memorandum of a debenture issued by an Agricultural Society creating a floating charge, short particulars of which are given in the Schedule below.
Signature of Applicant on behalf of Bank :—
Address :—
Date :—

Schedule of Particulars.

Date of Debenture :—
Name and Address of the Agricultural Society whose farming stock is affected.
Name :—
Address :—
Amount secured £.....
Name and address of the Bank in whose favour the memorandum of charge is registered :—
Name :—
Address :—
I hereby concur in the above application on behalf of the said Society.
Signature of Secretary or other officer authorised to concur by the Society :—

CANCELLATION OF AN ENTRY IN THE REGISTER ON PROOF OF DISCHARGE.
[Form A.C.3.]

I/We hereby apply for the cancellation of the entry of the Agricultural Charge registered against the following name or names on the day of , 192 , under Reference Number
Surname :—
Christian names :—
Signature of applicant or his Solicitors for the above cancellation.
Address :—
Date :—

We, the undersigned, being the persons authorised to agree on behalf of the Bank in whose favour the registration was made hereby agree to the cancellation of the above entry on discharge of the charge.
Signature of person signing on behalf of the Bank :—
Address :—
Date :—

APPLICATION FOR A CERTIFICATE THAT A REGISTRATION HAS BEEN CANCELLED.

[Form A.C.4.]

I/We hereby apply for a certificate that the registration of an Agricultural Charge which was registered at the Land Registry against the following name or names has been cancelled on the day of , 192 .
under Reference Number
Surname of Farmer :—
Christian names :—
Signature of Applicant or his Solicitor :—
Address :—
Date :—

It is hereby certified that the above registration has been cancelled on the Register.

Seal.

Date :—

APPLICATION FOR A CERTIFIED COPY OF THE MEMORANDUM FILED IN REGISTRY UNDER THE ACT.

[Form A.C. 5.]

I/We hereby apply for a certified copy of the memorandum filed in the Registry under the Act against the following name or names on the day of , 192 , under Reference Number .
Surname of Farmer :—
Christian names :—
Signature of Applicant or his Solicitors :—
Address :—
Date :—

APPLICATION FOR AN OFFICIAL SEARCH.

[Form A.C. 6.]

We hereby apply for an Official Search to be made in the Agricultural Charges Register for any subsisting entries therein under the undermentioned names, addresses and descriptions.

We request that the result of the search be { Posted / Telegraphed / Telephoned }

Signature of Applicant :— Fee Stamps for.....
Telephone No. :— Date :— duly affixed on
Telegraphic address :— Duplicate.

Surname. (In block letters).	Christian names. (In block letters).	All addresses and description.

Official Certificate.

The search reveals

Name.	Reference Number.	Date of Registration.

Date of Instrument.	Floating or Fixed Charge.	Amount of Loan.	Name and Address of the Bank in whose favour the Memorandum of charge is registered.

APPLICATION FOR THE RECTIFICATION OF AN ENTRY IN THE REGISTER.

[Form A.C. 7.]

I/We hereby apply for the Rectification of the entry registered against the following name or names on the day of 192 , under Reference Number .
(1) Surname of Farmer :—
Christian names :—
Signature and address of Applicant or his Solicitor :—
Address :—
Date :—
The above application is made for the following reasons :—
Date :

APPLICATION FOR PERSONAL SEARCH.

[Form A.C. 8.]

I (or We).....
of .....
apply to make a Search in the Register against the undermentioned names.
Dated this day of , 192 .

Surname.	Christian Name.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to appoint Mr. JOHN COLDSTREAM, Barrister-at-Law (Indian Civil Service), to be one of the Judges of the High Court of Judicature at Lahore in the place of Mr. Archibald Campbell, I.C.S., who has resigned.

The Lord Chancellor has appointed Mr. HORACE JOHN ROWLANDS to be the Judge of Clerkenwell County Court in the place of His Honour Judge Bairstow, K.C., retired. Mr. Rowlands was called to the Bar in 1895.

Mr. F. O. LANGLEY, M.C., Recorder of Oswestry (Salop), has been appointed Chancellor of the Diocese of Lichfield in succession to Mr. Alan Leslie, deceased. Mr. Langley was called to the Bar in 1907 and was appointed Recorder of Oswestry in December, 1927.

Mr. HERBERT DAVEY, M.B.E., Barrister-at-Law (Recorder of Wenlock), has been appointed Recorder of the County Borough of Burnley in succession to Mr. A. R. Kennedy, K.C. Mr. Davey was called to the Bar in 1897.

Mr. H. BANKES ASHTON, solicitor, Bury St. Edmunds, has been appointed Registrar of the Thetford County Court in succession to Mr. W. A. Greenland, solicitor, Attleborough and Thetford, who has resigned after holding the office for five years. Mr. Bankes Ashton also holds the appointment of Registrar and High Bailiff of the Bury County Court, District Registrar of the High Court, Clerk of the Peace for the Borough, and was admitted in 1883.

Mr. F. D. HEAD, B.A. (Oxon.), Barrister-at-law, has been appointed Examiner in Secretarial Practice and the Law and Practice of Meetings to the Incorporated Secretaries Association. Mr. Head was called to the Bar in 1895.

Mr. THOMAS HOWARD DEIGHTON, of the firm of Timbrell, Deighton & Nichols, solicitors, of 90, Cannon-street, E.C.4, has again, for the tenth time, taken office as Under-Sheriff for the City of London, having been appointed by Alderman and Sheriff Sir William Waterlow. Mr. Howard Deighton is one of His Majesty's Lieutenants of the City of London, a member of the Court of Common Council, Chairman of the Law and City Courts Committee of the City Corporation, and Deputy Alderman of the Ward of London Bridge. He was admitted in 1887.

Mr. JOHN L. FEATHER, solicitor, Deputy Town Clerk of Norwich, has been appointed Town Clerk of Chesterfield. Mr. Feather was admitted in 1914.

Retirement.

Mr. A. TOWNSEND, Assistant Town Clerk of Cambridge, is retiring after fifty-one years' service.

Major C. P. LOVELOCK, M.B.E., Solicitor, Clerk to the Carshalton Urban District Council, has tendered his resignation which will take effect on the 31st December next. Major Lovelock has held the appointment for nearly forty years.

Wills and Bequests.

Mr. Bannister Dent, solicitor, of Wenlock-terrace, York, left estate of the gross value of £22,222.

William Mackay, solicitor, Inverness, senior partner of Messrs. Innes & Mackay, Inverness, left personal estate in Great Britain of the gross value of £25,179.

Mr. Vincent Alsop, solicitor (60), of Gunterstone-road, West Kensington, and of the G.P.O., left estate of the gross value of £10,211.

A SOLICITOR WHO BEQUEATHED HIS BODY FOR DISSECTION.

Mr. Henry Reeve Everitt, of Broad House, Oulton Broad, Lowestoft, and Baltic-chambers, Waveney-road, Lowestoft, and 32, Prince of Wales-road, Norwich, solicitor and notary public, left estate of the gross value of £45,959, with net personalty £45,287. The testator gave £250 to William James Boycott, if acting with, or in or for his firm, at his death, "as a small token of appreciation of his good, faithful and disinterested services"; £150 each to Frank Moth and Daisy Moth, if in his brother's service at his death, with an additional £10 for each twelve months' service; £100 to Dr. Arthur Cleveland and "my body to Dr. Arthur Cleveland, in order that he may arrange an autopsy thereon for the benefit of science, and I have left to him the before-mentioned legacy of £100 expressly to cover the cost of this operation and for a

meeting of such members of the medical fraternity as he may choose to invite to discuss such unusual points of professional interest as may arise and in the manner I have verbally arranged with him whether he obtains my body or not. In any event I wish, direct, and devise and bequeath the aftermentioned legacy to him in full"; to his brother William George, "who has proved himself from birth upwards a 'blessed angel' on earth to our whole family and many relations," he gave his interest in the Broad House Estate and Oulton Broad, and the remainder of his personal property at Pedham; and he left £250 to his head clerk, Fred Tandy Hall, "who has faithfully served my firm for so many years."

TITHE (ADMINISTRATION OF TRUSTS) MEASURE, 1928.

The Tithe (Administration of Trusts) Measure, 1928, came into operation on Sunday last—"the appointed day." As a result, the first quarterly distribution by Queen Anne's Bounty under the new scheme authorised by the measure was made on Monday in the case of benefice tithe rent-charge. The measure applies only to benefice tithe rent-charge, extraordinary rent-charge, corn rents, and other payments in lieu of tithe which are in collection through the Area Committees set up under the Tithe Act, 1925.

To-day, in the case of all benefice tithe rent-charge in collection through the Area Committees, incumbents will receive one-half of the net moneys estimated by Queen Anne's Bounty to be available for payment to them out of the half-year's tithe rent-charge due on this date, and on 1st January they will receive the other half. The distribution of subsequent half-yearly tithe rent-charge will be made on a similar basis.

The first quarterly distribution in respect of extraordinary rent-charge was also made on the same day, but in the case of corn rents and other payments in lieu of tithe belonging to benefices the first distributions will be made on the first respective due dates for payment by the landlords after "the appointed day." Normally, distributions will be made quarterly, but in certain cases—namely, corn rents payable annually—some variation from the general scheme of distribution will be necessary. In all cases the amounts to be distributed will be based on estimates made by Queen Anne's Bounty as in the case of tithe rent-charge.

SOLICITOR SENT FOR TRIAL.

At a special sitting of Leicester City Police-court, on Monday, Samuel Yardley Tilley, aged sixty-three, solicitor, of Leicester, was committed for trial on a charge of forging endorsements on two cheques and converting the money to his own use.

It was stated in evidence that Tilley forged the endorsements on two cheques sent to him on behalf of clients by the Leeds Permanent Building Society for £490 and £485, respectively, and paid the money into his own account. When inquiries were made it was alleged that he wrote to the solicitors for the society and referring to one cheque said:—"I deeply regret that the cheque has been used for other purposes, in consequence of depression in business and heavy pressing liabilities.

"I am anxious if possible to make restitution, and if you can see your way not to prosecute will place a proposition before you. If not, I am prepared to abide by the consequences. For myself it does not matter, but I am anxious for the future welfare of my wife and children."

In answer to the clerk, Tilley said that he pleaded "Guilty" to endorsing the cheques, but not with intent. When formally charged, he pleaded "Not Guilty," and reserved his defence.

THE HANDWRITING OF DOCTORS.

The magistrates' clerk at Jarrow recently, when handed a medical certificate, remarked, "I wish doctors would write legibly. Solicitors are good writers, but doctors are rotten writers."

FORTY YEARS' WORK IN POLICE COURTS.

Mr. Thomas Proud, chief clerk at Greenwich and Woolwich Police Courts, having retired from the service after forty years' work in London police courts, was presented, at Greenwich recently, by Mr. H. McKenna, the senior magistrate, with a clock, subscribed for by the magistrates, court officials, solicitors, press representatives, and others having business at the court.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 11th October, 1928.

	Middle Price 3rd Oct.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	87	4 12 0	—
Consols 2½%	55⅝	4 10 0	—
War Loan 5% 1929-47	102⅞	4 17 0	4 17 6
War Loan 4½% 1925-45	99	4 11 0	4 14 0
War Loan 4% (Tax free) 1929-42	100½	4 0 0	3 19 6
Funding 4% Loan 1960-1990	88½xd	4 10 6	4 11 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	94	4 5 6	4 7 6
Conversion 4½% Loan 1940-44	99¼	4 11 0	4 13 0
Conversion 3½% Loan 1961	77½	4 10 6	—
Local Loans 3% Stock 1921 or after	64½	4 13 0	—
Bank Stock	258	4 14 0	—
India 4½% 1950-55	94½	4 15 6	4 19 6
India 3½%	71	4 19 0	—
India 3%	61	4 18 0	—
Sudan 4½% 1939-73	96	4 14 0	4 15 0
Sudan 4% 1974	87	4 12 0	4 17 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	82xd	3 13 0	4 8 0
Colonial Securities.			
Canada 3% 1938	87	3 9 0	4 16 0
Cape of Good Hope 4% 1916-36	94	4 5 0	4 19 6
Cape of Good Hope 3½% 1929-49	82	4 5 6	4 18 6
Commonwealth of Australia 5% 1945-75	99	5 1 0	5 2 0
Gold Coast 4½% 1956	95	4 14 6	4 17 6
Jamaica 4½% 1941-71	94	4 16 0	4 17 6
Natal 4% 1937	93	4 6 0	5 0 0
New South Wales 4½% 1935-45	91	4 19 0	5 7 0
New South Wales 5% 1945-65	100	5 0 0	5 3 0
New Zealand 4½% 1945	97	4 14 0	4 17 6
New Zealand 5% 1946	105	4 15 6	4 14 0
Queensland 5% 1940-60	98	5 2 0	5 0 6
South Africa 5% 1945-75	104	4 16 0	4 16 0
South Australia 5% 1945-75	99	5 1 0	5 2 0
Tasmania 5% 1945-75	101	4 19 0	5 0 0
Victoria 5% 1945-75	100	5 0 0	5 0 0
West Australia 5% 1945-75	98	5 2 0	5 2
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	65	4 13 0	—
Birmingham 5% 1946–56	103	4 17 0	4 15 0
Cardiff 5% 1945–65	102	4 18 0	4 16 6
Croydon 3% 1940–60	70	4 5 0	4 16 0
Hull 3½% 1925–55	77	4 10 0	5 0 0
Liverpool 3½% Redeemable at option of Corporation	75	4 13 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54½	4 12 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	64	4 13 6	—
Manchester 3% on or after 1941	64½	4 13 0	—
Metropolitan Water Board 3% 'A' 1963–2003	65	4 12 0	4 12 6
Metropolitan Water Board 3% 'B' 1934–2003	66	4 11 0	4 12 6
Middlesex C. C. 3½% 1927–47	84	4 3 6	4 17 0
Newcastle 3½% Irredeemable	74	4 14 6	—
Nottingham 3% Irredeemable	64xd	4 12 6	—
Stockton 5% 1946–66	102	4 19 0	4 19 0
Wolverhampton 5% 1946–56	102	4 18 0	4 19 9
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	81½	4 18 0	—
Gt. Western Rly. 5% Rent Charge	99	5 1 0	—
Gt. Western Rly. 5% Preference	93	5 8 0	—
L. & N. E. Rly. 4% Debenture	75	5 6 0	—
L. & N. E. Rly. 4% Guaranteed	70	5 14 0	—
L. & N. E. Rly 4% 1st Preference	60	6 12 0	—
L. Mid. & Scot. Rly. 4% Debenture	79½	5 0 6	—
L. Mid. & Scot. Rly. 4% Guaranteed	77	5 4 0	—
L. Mid. & Scot. Rly. 4% Preference	69	5 16 0	—
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